



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0281]

RIN 1625-AA00

Safety Zone; Celebrate Our Stars and Stripes Fireworks, Raritan Bay, Perth

Amboy, NJ

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Raritan Bay near Perth Amboy, NJ, for a fireworks display. This temporary safety zone is necessary to protect spectators and vessel from the hazards associated with the fireworks display. This rule is intended to restrict all vessels from a portion of Raritan Bay during the fireworks unless authorized by the Captain of the Port (COTP) New York or a designated representative.

DATES: This rule is effective from 9 p.m. on July 2, 2022, until 10 p.m. on July 3, 2022. This rule will be enforced either on July 2, 2022, from 9 p.m. to 10 p.m. or on July 3, 2022, from 9 p.m. to 10 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0281 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Gutierrez, Lizette, U.S. Coast Guard; telephone (718) 354-4154, email D01-SMB-SecNY-Waterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor was late in submitting the marine event application. This late submission did not give the Coast Guard enough time to publish an NPRM followed by a final rule before the effective date thus making it impracticable to publish an NPRM. The event sponsor advised that the event is in correlation with a festival bringing together Perth Amboy and South Amboy, NJ, to honor Independence Day. Any change to the date of the event would cause economic hardship on the event sponsor, negatively impacting other activities being held in conjunction with the event.

The location of the event is centrally located between both Perth Amboy and South Amboy which is more advantageous for the event spectators and sponsors. In

addition it has less of an impact on vessel traffic within Raritan Bay because the location is out of the major shipping lanes.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP New York has determined this temporary safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on the waters of Raritan Bay near Perth Amboy, NJ, for a fireworks event on July 2, 2022. If the event is unable to happen on July 2, 2022, due to inclement weather, the fireworks event will instead occur on July 3, 2022. All persons and vessels shall comply with the instruction of the COTP New York or a designated representative during the enforcement of the temporary safety zone. Entering into, transiting through, or anchoring within the temporary safety zone is prohibited unless authorized by the COTP New York or a designated representative.

Based on the inherent hazards associated with fireworks, the COTP New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris, especially burning debris falling on passing or spectator vessels, has the potential to result in serious injuries or fatalities. This temporary safety zone will restrict vessels from a portion of Raritan Bay around the location of the fireworks launch platform before, during and immediately after the fireworks display.

The Coast Guard determined that this regulated area will not have significant impact on vessel traffic due to its temporary nature and limited size and the fact that vessels are allowed to transit the navigable waters outside of the regulated area.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

The Coast Guard’s implementation of this temporary safety zone will be of short duration and is designed to minimize the impact to vessel traffic on the navigable waters. This temporary safety zone will only be enforced for approximately 60 minutes. Due to the location, vessels will be able to transit around the safety zone in a safe manner.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities

between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone lasting only 1 hour that will prohibit entry within a 300-yard radius of the fireworks barges located in approximate position 40°29'28"N, 074°15'45"W. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T01-0281 to read as follows:

§ 165.T01-0281 Safety Zone; Raritan Bay, Perth Amboy, NJ.

(a) *Location.* The following area is a safety zone: all navigable waters of Raritan Bay within a 300-yard radius of the fireworks barge located in approximate position 40°29'28"N, 074°15'45"W, in the vicinity of Perth Amboy, NJ, approximately 1,110 yards southeast of Ferry Point, Perth Amboy, NJ.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF channel 16 or 718-354-4154 (Sector New York command center). Those in the

safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashlight or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(4) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of the event participants or official patrol vessels in the regulated areas during the effective dates and times unless authorized by COTP or designated representative.

(5) The COTP or designated representative may delay or terminate any marine event in this subpart at any time if it is deemed necessary to ensure the safety of life or property.

(d) *Enforcement period.* This section will be subject to enforcement on either July 2, 2022, from 9 p.m. to 10 p.m. or on July 3, 2022, from 9 p.m. through 10 p.m.

Dated: May 4, 2022.

Z. E. Merchant,
Captain, U.S. Coast Guard,
Captain of the Port, New York.

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